result in a verdict of acquittal. In these circumstances it seems to us that we must accept the decision of the jury on the facts, and that we are not in a position to quash this conviction, unless we substitute ourselves as a tribunal of fact when we do not have, as had the jury, the opportunity of hearing and seeing the witnesses. Therefore, this appeal must be dismissed. I think that I ought to add that it is obvious from the wording of his certificate that Mr. Justice Horridge took the same view of the functions of this Court as we have expressed."

It should be noted that that is in one respect a much stronger case than the present one, because a very able and experienced Judge, Horridge, J., had expressed an emphatic disapproval of the verdict. That is a feature which is lacking in the present case. Certain cases were cited to us in which the verdict of the jury was set aside by the Court of Criminal Appeal. I think that they can all be explained. The first of these is the well known case of *R. v. Wallace*[2] That was a case which depended on circumstantial evidence and it appears that the evidence, such as it was, was equally consistent with innocence. So, in effect, there was no case to go to the jury and a submission should have been successful. In *R. v. Barnes*[3], it appears that there was no satisfactory evidence that any offence had been committed. It also appears that the jury may have been deceived as to the character of the principal witness for the prosecution and that there were other features which made the trial "unsatisfactory". It appears that the trial Judge disagreed with the verdict. In *R. v. Millichamp*[4], it appears that the case depended on proof of identity and the evidence of identity was so slight as to be more or less worthless. *R. v. Hitchcock*[5], is very scantily reported and it is difficult to extract the *ratio decidendi*. It appears to be based, like the preceding one, on absence of proper evidence of identification. In *R. v. Finch*[6], the summing appears to have been defective.

After an examination of the authorities we have come to the conclusion that if we were to quash the conviction we would be going beyond the authority of decided cases and we would be arrogating to ourselves powers which the Ordinance has not conferred upon us. The appeal must be dismissed.

Appeal dismissed.

VIVIAN IGNATIUS EVAN WONG
v.
D. M. LAUDER & ANOR.

[Orig. Civ. Juris. (Sir Charles Murray-Aynsley, C.J.) March 13, 1952]

[Singapore — Suit No. 583 of 1951]

Landlord and tenant — Claim for possession and mesne profits — Defence of "possession".

Originally, this was a claim for possession and mesne profits. Before the hearing of the case, the defendants left the premises and the only matter in dispute was whether the plaintiff was entitled to single or double rent for the period from August 1st to October 31st, 1951 the date when the defendants left. According to the correspondence the arrangement was made by the parties verbally at an interview in the plaintiff's office in July 1950. On January 10, 1951 the plaintiff wrote to the 2nd defendant setting out the terms and to this version the 2nd defendant did not demur. The terms were as follows:—

"My people are now in Singapore but as I agreed to let you have the house for a year, I shall have to make other arrangements until the end of July. If you can manage to get a place before then, I shall, of course, be very pleased but in any event, I hope you can manage to remove by the end of July."

Held that the agreement was for one year ending on July 31, 1951. The fact that the house was not ready for occupation on August 1st is not material. The 2nd defendant is therefore liable for double rent. The 1st defendant is not concerned.

Case referred to:—

(1) *Kisch v. Hawes* (1935) Ch. 102.

CIVIL SUIT.

J. L. P. Harris for the plaintiff.

D. S. Marshall for the defendants.

Cur. Adv. Vult.

Sir Charles Murray-Aynsley, C.J. : — This was originally a claim for possession and mesne profits. Now, as the defendants have left the premises, the only matter in dispute is whether the plaintiff is entitled to single or double rent for the period from Augusst 1st to Ocotober 31st, 1951, the date when the defendants left.

To begin with there was some confusion as to which of the defendants was the tenant. The writ was issued against the first defendant. The second defendant was added later. It now seems clear that the second defendant was the tenant. Both occupied the house until they left.

The second defendant filed a defence on September 21st last in the following terms:—

1. The 2nd defendant denies that the plaintiff is entitled to possession of the premises known as No. 10, Cotswold Close, Braddell Height Estate, Braddell Road, Singapore, or to mesne profits.

2. The tenancy of the 2nd defendant has at no time been lawfully determined.

3. The 2nd defendant is in possession of the premises referred to in the Statement of Claim.

On this the plaintiff, relying on *Kisch v. Hawes*[1], claimed that the delivery of the defence constituted a forfeiture. It should be noted that in that case the only defence was possession, under Order 21 r. 21, as it then was in England. Seeing the wording of the rule, which corresponds to our Order 22 r. 19, this decision was certainly hard on the tenant. But in the present case there was also a plea that the term had not been determined. If one looks at the form given in Appendix D, section 7 of the *White Book*, a defence is

set out which couples a plea of possession with one that there had been no notice to quit. In view of Order 19 r. 5 it cannot be contended that this plea could be a cause of forfeiture. If, therefore, Farewell, J., was right, *Kisch v. Hawes* can only apply to a bare plea of possession by a tenant. It is to be noted that the current edition of *Bullen & Leake* has not noted *Kisch v. Hawes.*

This leaves me free to decide the question on the merits.

This really depends on what the demise was. The plaintiff, to judge by the Statement of Claim is uncertain. The arrangement between the parties was made verbally at an interview in the plaintiff's office in July, 1950. By this time memories are blurred in all probability. I think that the correspondence makes it plain what was agreed. On January 10th, 1951, the plaintiff wrote to the second defendant setting out the terms and to this version the second defendant did not demur. I find, therefore, that the agreement was for one year ending on July 31st, 1951. The fact that the house was not ready for occupation on August 1st is not material.

The second defendant is, therefore, liable for double rent. The first defendant is not concerned.

There must be judgment against the second defendant with costs for the balance of double rent, that is $900 with costs.

The first defendant was properly a party to the action until she left. Thereafter nothing has been claimed against her and she is not affected by this judgment. I should like further argument as to the question of costs so far as concerns this defendant.

Judgment against 1st defendant.

TAMBY BIN OSMAN & ORS. v. REX*

[C.C.A. (Sir Charles Murray-Aynsley, C.J. (Singapore) Mathew, C.J. (F.M.) and Knight, J.) March 28, 1952]

[Singapore — Criminal Appeal No. 20 of 1951]

Penal Code, ss. 299 and 300 — Murder — Criminal Procedure Code, s. 216 — Illustration to — Difference in the functions of a Judge and jury — Non-direction.

The first 4 appellants in this case were convicted of murder, and the fifth and sixth appellant of an offence under section 149 of the Penal Code. All the appellants were sentenced to death. At the hearing of the appeal, a number of objections were taken to the summing up, both as to misdirection on the law and the facts. The counsel for the first 4 appellants contended that the learned trial Judge failed to explain to the jury the difference between murder under section 300 of the Penal Code and culpable homicide not amounting to murder under section 299, and this was a fatal omission. Counsel further contended that the illustration to section 216 of the Criminal Procedure Code created an absolute duty to do this in all cases.

Held that the illustration to section 216 of the Criminal Procedure Code (Cap. 21) merely tries to explain in a simple way the difference in the functions of a Judge and a jury in a typical instance. The expressions culpable homicide not amounting to murder and murder are defined in terms so closely resembling each other that a Judge should not attempt to draw a distinction between them unless there is evidence from which the jury might deduce that the lesser offence of culpable homicide not amounting to murder had been committed.

Case referred to :—

(1) *Kwaku Mensah v. The King* (1946) A.C. 83.

COURT OF CRIMINAL APPEAL.

D. S. Marshall, H. E. Cashim and *K. K. Bezboruah* for first 4 appellants.

Sandy G. Pillay for 5th and 6th appellants.

L. Rayner (Crown Counsel) for the Crown.

Cur. Adv. Vult.

The judgment of the Court was delivered by :

Sir Charles Murray-Aynsley, C.J. : — In this case the first four appellants were convicted of murder, and the fifth and sixth appellants of an offence under section 149 of the Penal Code. All the appellants were sentenced to death. The proceedings arose out of the death of one J. W. Davies which was the result of a ferocious, sustained and unrelenting attack on him by a mob during the riots of December 1950.

There was abundant and uncontradicted evidence that on the day in question the deceased, who was unarmed and travelling quietly in a bus with his family, was pulled out of the bus into the street by an angry mob who were looking for Europeans to attack. Outside the bus the deceased was attacked by a number of persons armed with sticks and bottles, who beat him until he fell into a drain and with repeated blows smashed a wooden bedstead with which he had covered himself for protection and pulled it away. He was beaten on the head a number of times and sustained comminuted fracture of the skull from which he died. It was alleged by the prosecution that the first four appellants actually beat the deceased on the head, that the fifth and sixth appellants were members of the mob, and that they were armed with changkol handles and took an active part in the proceedings. At the trial the defence of all the appellants was that they were not present.

At the hearing of the appeal, a number of objections were taken to the summing up, both as to misdirection on the law and the facts. Counsel for the first four appellants contended that the summing up was defective in several respects : the learned trial

* Leave to appeal to the Judicial Committee of the Privy Council has been refused. — *Ed. M.L.J.*